

**Felgoise Law Firm**

Brian M. Felgoise  
261 Old York Road – Suite 518  
Jenkintown, PA 19046  
215-886-1900  
215-886-1909 (Facsimile)

*Counsel for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MICHAEL B. WINN, individually and on  
behalf of all others similarly situated,

Plaintiff,

-against-

BMW OF NORTH AMERICA, LLC,

Defendant.

No:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Michael B. Winn (“Plaintiff”), by and through his attorneys, brings this class action complaint on his own behalf and on behalf of all others similarly situated, to obtain an injunction, damages, costs of suit, and attorneys’ fees from defendant BMW of North America, LLC (“BMW”). Plaintiff complains and alleges upon knowledge as to himself and his own acts, and upon information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This is a nationwide class action against BMW on behalf of all persons and entities in the United States who purchased or leased a BMW automobile in any State

equipped with a BMW N54 automobile engine (the “Vehicles”) from 2006 to the present (the “Class”).

2. BMW manufactured, distributed, advertised, marketed, promoted, warranted and sold the Vehicles to consumers throughout the United States. BMW did so without disclosing that the Vehicles contained a defective fuel injection system (the “Fuel Injection System”) and high pressure fuel pump (the “Fuel Pump”).

3. Indeed, in 2006 BMW announced that it had completed development of its N54 engine which incorporated state of the art technology including twin turbo engines, the Fuel Injection System, and a highly pressurized Fuel Pump that were designed to eliminate “turbo lag” (a common problem in turbo-charged vehicles that refers to the delay between the time it takes for the turbines to begin spinning until the time that power transfers to the engine). BMW touted the N54 automobile engine, Fuel Injection System and Fuel Pump combination as having increased fuel efficiency and completely eliminated turbo lag, and as superior to that of vehicles manufactured by other companies.

4. Among other things, BMW stated:

By combining twin turbochargers with BMW’s direct fuel injection system and advanced piezo injector technology, we achieved the benefits of turbocharging without the drawbacks, namely poor fuel efficiency and turbo lag. In fact, we eliminated turbo lag altogether.

5. In addition, through window stickers and other marketing materials, BMW provided very specific performance data about the Vehicles, including the expected horsepower of the N54 engine and the expected gas mileage that the Vehicles would achieve.

6. Plaintiff and the Class were routinely exposed to BMW's representations, including, but not limited to, BMW's promotional literature and advertisements, all of which BMW routinely and intentionally communicated to the public through various media and upon which Plaintiff and the Class were intended to, and did, rely.

7. However, as demonstrated below, BMW failed to disclose that the Fuel Pump (responsible for injecting fuel into the pistons that run the engine) would fail under normal driving conditions causing the Vehicles to go into "limp mode" – a highly reduced power mode that could cause the Vehicle to come to a complete stop. This makes the Vehicles extremely unsafe to drive. As demonstrated below, this failure routinely occurs while driving on highways, amidst traffic traveling at very high speeds, posing life-threatening risks to drivers and passengers of the Vehicles and to all other persons on the road at the time the failure occurs.

8. Absent an adequate recall that corrects the defect, this risk cannot be avoided.

9. BMW has concealed the significant safety risk that this defect poses to the public. In addition, BMW has failed to disclose that the defect actually causes decreased fuel efficiency and performance – that the "limp mode" causes an even more significant performance delay than the turbo lag delay the N54 engine, Fuel Injection System, and Fuel Pump were designed to avoid.

10. Since 2006, thousands of BMW customers who purchased or leased the Vehicles nationwide have experienced this failure, and the unreasonable safety risk associated with it, and have had their Fuel Pumps repeatedly replaced; some within the first 1,000 miles of driving the Vehicle.

11. Despite this knowledge, BMW continues to improperly conceal these defects and has not taken the necessary steps to properly cure the defect and ensure the public safety. BMW knowingly sold, and continues to sell, the Vehicles to the detriment of unsuspecting consumers nationwide.

12. In addition, the Vehicles were sold pursuant to a New Vehicle Limited Warranty that provides coverage for defects in materials and workmanship for four years or 50,000 miles (the “Warranty”). However, BMW has not corrected the defect; BMW continues to sell, lease and manufacture Vehicles with the defect. Although BMW has agreed to replace the Fuel Pumps, BMW has refused to fix the defect that causes the Fuel Pump failures and prevent the failure from occurring in the first instance; posing a known, unnecessary safety risk of which the consumer is not aware at the time the consumer purchases or leases his or her Vehicle.

13. As a result of BMW’s affirmative misrepresentations, concealment of material information, deceptive conduct, and refusal to honor its Warranty, BMW has damaged Plaintiff and the Class and has unjustly profited from its wrongdoing. In addition, BMW has wrongfully refused to notify customers that the Fuel Pumps it places on its Vehicles will routinely fail, and that the replacement Fuel Pumps will also fail, posing a repeated, unnecessary safety risk to the public safety.

14. As a result, Plaintiff brings this class action for two purposes: (1) to obtain an injunction preventing BMW from selling or leasing the Vehicles (whether new or certified pre-owned) and to compel BMW to issue a recall for the Vehicles that fixes the known defect and eliminates the unnecessary and significant safety risk the defect poses to consumers at BMW’s expense; and (2) to remedy BMW’s unlawful conduct,

which constitutes a violation of the Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, *et seq.*, and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual Class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which more than two-thirds of the proposed Class, on the one hand, and defendant BMW, on the other, are citizens of different states.

16. This Court has jurisdiction over BMW because it maintains its principal headquarters in New Jersey; is registered to conduct business in New Jersey; has sufficient minimum contacts in New Jersey; or otherwise intentionally avails itself of the markets within New Jersey through the promotion, sale, marketing, and distribution of its vehicles to render the exercise of jurisdiction by this Court proper and necessary. Moreover, BMW's wrongful conduct (as described herein) emanates from New Jersey and foreseeably affects consumers in New Jersey. Most, if not all, of the events complained of below occurred in or emanated from BMW's corporate headquarters located at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677-7731.

17. Venue is proper in this District under 28 U.S.C. § 1391(a) because BMW resides in this District.

### **THE PARTIES**

18. Plaintiff Michael B. Winn ("Plaintiff") is a Texas resident. Plaintiff purchased a 2008 BMW 535i Vehicle from an authorized BMW dealership. After driving the Vehicle approximately 35,000 miles, the Vehicle's loss of power light came

on and the Vehicle stalled while the Plaintiff was driving. The Vehicle was taken to an authorized BMW service center. The authorized BMW service center informed Plaintiff that his Fuel Pump had failed. Like all members of the Class, BMW never notified Plaintiff before he purchased his Vehicle that the Vehicle contains this defect; that it would repeatedly fail under normal driving conditions; and that the known defect would not be corrected pursuant to his Warranty. Like all members of the Class, Plaintiff did not learn of the defect until his Fuel Pump failed.

19. BMW is a Delaware limited liability company with its principal place of business and North American headquarters located in Woodcliff Lake, New Jersey. BMW maintains corporate offices and a training center in Montvale, New Jersey, a parts distribution center in Mount Olive, New Jersey, and a Vehicle Preparation Center in Port Jersey. BMW does business throughout New Jersey, including throughout this judicial district. Upon information and belief, all corporate decisions regarding the Vehicles, the use and replacement of Fuel Pumps on the Vehicles, the applicable technical service bulletins, and the representations and acts of concealment which are the subject of this lawsuit were directed by, or emanated from, BMW representatives working in New Jersey or directly reporting to superiors situated in New Jersey. At all times relevant hereto, BMW was in the business of designing, manufacturing, distributing, advertising, marketing, promoting, and/or selling the Vehicles in interstate commerce and in New Jersey. BMW is also in the business of marketing, supplying, and selling written Warranties to the public at large through a system of authorized dealers and sales agents.

### **PLAINTIFF'S CLASS ALLEGATIONS**

20. Plaintiff seeks to bring this case as a nationwide class action on behalf of himself and all others similarly situated in the United States as members of the proposed Class, defined as follows:

All persons and entities in the United States who purchased or leased a BMW automobile equipped with a BMW N54 automobile engine from 2006 to the present.

21. Excluded from the Class are all claims for wrongful death, survivorship and/or personal injury by Class members. Also excluded from the Class is BMW, any entity in which BMW has a controlling interest, and its legal representatives, heirs, and successors.

### **NUMEROSITY**

22. The Class is so numerous that joinder of all of its members is impractical. Upon information and belief, BMW has sold thousands of Vehicles.

23. Although the precise number of Class members and their addresses are unknown to Plaintiff, that information is readily ascertainable from BMW's records. Class members may be notified of the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

### **COMMON QUESTIONS OF LAW AND FACT**

24. Common questions of law and fact exist as to all Class members. These questions predominate over questions affecting only individual Class members. These common legal and factual questions include but are not limited to the following:

- a. Whether BMW breached its express warranties;

b. Whether the N54 engine, Fuel Injection System, and/or Fuel Pump was defectively designed;

c. Whether BMW engaged in a pattern and practice of deceit or deceptive conduct in connection with the offer and sale of the Vehicles, or in connection with its representations or disclosures regarding the N54 Engine, the Fuel Injection System and/or the Fuel Pump;

d. Whether BMW concealed or failed to disclose material information concerning the N54 Engine, the Fuel Injection System and/or the Fuel Pump or its Warranty as it relates to these items;

e. Whether BMW's publicly disseminated advertisements constitute affirmative misrepresentations that demonstrate that the N45 engine, the Fuel Injection System, and the Fuel Pump could properly operate under normal driving conditions without defect or incident;

f. Whether BMW's publicly disseminated promotional materials and advertisements were accurate;

g. Whether BMW failed to adequately test the N54 engine, Fuel Injection System and/or Fuel Pump prior to distribution of the Vehicles;

h. Whether BMW failed to adequately test the N54 engine, Fuel Injection System and/or Fuel Pump after they were combined with other components on the Vehicles;

i. Whether the N54 engine, Fuel Injection System and/or Fuel Pump are defective as a result of combining them with other components on the Vehicles;



j. Whether BMW failed to simulate real driving conditions when testing the N54 engine, Fuel Injection System and/or Fuel Pump;

k. Whether an injunction should be issued to prevent BMW from selling or leasing the Vehicles and to recall, inspect and, as necessary, repair and/or replace engines and/or component parts in their Vehicles and adequately inform members of the Class of the design defects at BMW's expense; and

l. Whether Plaintiff and the Class are entitled to damages and attorneys' fees as a result of BMW's unlawful conduct.

### **TYPICALITY**

25. Plaintiff's claims are typical of the claims of the Class. Plaintiff and each member of the proposed Class purchased or leased a BMW Vehicle. In connection with their respective Vehicle purchases or leases, Plaintiff and each Class member were subject to the same disclosures and received the same written Warranty from BMW. Similarly, Plaintiff and all Class members sustained damages. The losses of each Class member were directly caused by BMW's actions as alleged herein.

### **ADEQUACY OF REPRESENTATION**

26. Plaintiff can and will fairly and adequately represent and protect the interests of the Class and has no interests that conflict with or are antagonistic to the interests of the Class. Plaintiff has retained attorneys competent and experienced in class action litigation.

### **SUPERIORITY**

27. A class action is superior to any other available method for the fair and efficient adjudication of this controversy since, as demonstrated above, common

questions of law and fact overwhelmingly predominate over any individual questions that may arise.

28. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for BMW, or adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

29. BMW has acted or refused to act on grounds generally applicable to all Class members, thereby making appropriate any final judgment with respect to the Class as a whole.

### **SUBSTANTIVE ALLEGATIONS**

#### **BMW's Representations**

30. BMW designed and manufactured the N54 engine, the Fuel Injection System, and the Fuel Pumps installed in the Vehicles.

31. BMW spent millions of dollars to publicly disseminate print advertisements, television commercials, website graphics and videos extolling the virtues of its N54 Engine, Fuel Injection System and Fuel Pump, and their combined ability to eliminate turbo lag.

32. BMW's promotional literature and advertisements include extensive representations about the quality, strength and high-performance capabilities of its N54 Engine, Fuel Injection System and Fuel Pump.

33. BMW publicly disseminated these representations in its promotional literature and advertisements with the intention that Plaintiff and the Class would be exposed to and would rely upon the representations and purchase or lease the Vehicles.

34. Plaintiff and the Class did, in fact, rely on the representations made by BMW in its brochures, promotional literature and advertisements, as well as representations made by its authorized dealers, in purchasing the Vehicles.

**The Defect**

35. Contrary to BMW's representations, the Fuel Pump fails when subjected to ordinary, on-road driving conditions in the complete absence of driving-related trauma, on roadways maintained by federal, state and local governments.

36. The failures result from the defective design and/or manufacture of the N54 engine, Fuel Injection System or Fuel Pump alone, failure to properly test the Fuel Pump, and/or a defect resulting from combining the Fuel Pump with other components of the Vehicles.

37. This defect, alone or when combined with other factors, causes the Fuel Pump to fail under normal driving conditions and renders the Vehicles unsafe and unfit for their intended use.

38. Based on information it had, should have had, or of which it was aware or should have been aware, BMW knew the N54 Engine, Fuel Injection System, and Fuel Pump were designed and/or manufactured so that they could not withstand normal driving conditions and, as a result, would fail under normal driving conditions and were accordingly defective.

39. Despite these defects, the resulting Fuel Pump failures, and the significant safety risk this defect poses to the public, BMW has refused to issue an adequate recall that permanently fixes the defect pursuant to its Warranty.

### **The BMW Warranty**

40. BMW Vehicles are warranted by a 48 month/50,000 mile Warranty. The Warranty provides as follows:

#### **Warrantor**

BMW of North America, LLC (BMW NA) warrants...against defects in materials or workmanship to the first retail purchaser, and each subsequent purchaser.

#### **Warranty Period**

The warranty period is 48 months or 50,000 miles, whichever occurs first.

#### **Warranty Coverage**

To obtain service under this warranty, the vehicle must be brought, upon discovery of a defect in material or workmanship, to the workshop of any authorized BMW center in the United States or Puerto Rico, during normal business hours. *The BMW center will, without charge for parts or labor, either repair or replace the defective part(s) using new or authorized remanufactured parts.*<sup>1</sup>

41. The Warranty specifically states that BMW will repair or replace the defective parts; however, BMW has failed to correct the defect that causes the Fuel Pump failures, and knows at the time it replaces a failed Fuel Pump that the defect has not been corrected and that the failure could re-occur.

42. By Technical Service Bulletin dated May 2010 (the "Bulletin"), BMW recognized the Fuel Pump failures for some (but not all) Vehicles, and extended its

---

<sup>1</sup> All emphasis is added unless otherwise stated herein.

Warranty of the Fuel Pump to 10 years or 120,000 miles. Specifically, BMW's Bulletin stated:

*BMW has become aware of a potential problem that could affect the durability of the High-pressure Fuel Pump (HDP) of certain MY 2007, 2008, 2009, and 2010 BMW automobiles equipped with N54 engines.* We estimate that only a small percentage of vehicles will actually develop the problem. Vehicles affected may have the Service Engine Soon lamp illuminated with various low fuel pressure-related faults....Also, the affected vehicles may experience an extended engine starting time ("long crank") or reduced engine performance ("engine failsafe mode") when the High-pressure Fuel Pump malfunctions.

\* \* \*

As a commitment to our customers and to demonstrate our confidence in our product, BMW will extend the emissions warranty of the High-pressure Fuel Pump (HDP) from 4 years or 50,000 miles to 10 years or 120,000 miles, whichever comes first.

\* \* \*

Warranty coverage for all other parts is not affected.

43. The Bulletin did not commit to fixing the defect; only to replacing failed Fuel Pumps, and only after the failure manifests itself during the extended warranty period.

44. Thereafter, on October 26, 2010, BMW notified consumers that it would be recalling "some model year 2007-2010 BMW's" equipped with the N54 engine and which featured BMW's Fuel Injection System and Fuel Pump ("the Recall"). BMW further stated that the Recall will "entail replacement of the high-pressure fuel pump and/or a software update."

45. The Recall only commits to replacing the Fuel Pumps or updating the software in "some" of the Vehicles. In addition, the Recall will not cure the defect; it will simply replace old, defective Fuel Pumps with new, defective Fuel Pumps.

46. Indeed, both the Bulletin and the Recall notify consumers of a “problem” that affects the Fuel Pumps, but they do not identify what that problem is. In addition, although BMW commits to repairing or replacing some of the Fuel Pumps, BMW has, to date, failed to issue a recall that commits to fixing the “problem” that causes the failures in the first instance.

47. Instead, BMW continues to misrepresent the ability and performance of its Vehicles, conceals the known “problem” or defect, and allows the failure to repeatedly manifest itself, thereby presenting an unnecessary safety risk to consumers, and the public at large.

48. To make matters worse, BMW’s Owner’s Manual specifically warns of the detrimental effects and dangers to personal safety associated with the use of parts and accessories that are not “approved by BMW.” In tandem with this warning, BMW reiterates its Warranty of defects, stating:

For your own safety, use genuine parts and accessories approved by BMW. When you purchase accessories tested and approved by BMW and Genuine BMW Parts, you simultaneously acquire the assurance that they have been thoroughly tested by BMW to ensure optimum performance when installed on your vehicle

***BMW warrants these parts to be free from defects in material and workmanship.***

49. Accordingly, Plaintiff and the Class cannot substitute BMW’s N54 engine, Fuel Injection System or Fuel Pump with parts from another manufacturer in order to alleviate the problems or potential danger posed by their defects.

50. Thus, BMW repeatedly profits from its refusal to honor the Warranty and correct the defect, forcing Plaintiff and the Class to repeatedly replace the Fuel Pump

each time a Fuel Pump fails, repeatedly exposing Plaintiff and the Class to an unnecessary safety risk.

51. BMW's Bulletin and Recall significantly downplay this defect. As described more fully below, BMW's Bulletin and Recall fail to appreciate, or purposely turn a blind eye to, the significant number of consumers who have experienced this failure while driving their Vehicles, and the magnitude of the safety risk that this defect poses to the public safety.

52. As a result of BMW's failure to honor its Warranty and correct this defect, Plaintiff and the Class have been injured and damaged. Plaintiff and the Class purchased or leased Vehicles they otherwise would not have purchased or leased, paid more for those Vehicles than they otherwise would have paid, and have been, and will continue to be, subjected to an unreasonable risk to their safety.

**Complaints are Numerous and Ongoing**

53. On April 28, 2008, the National Highway Traffic Safety Administration ("NHTSA") opened an investigation into this defect. However, at that time, BMW represented that the 2007 BMW 335I was the only Vehicle affected and provided NHTSA with a spreadsheet listing complaints from 2007 BMW 335I customers only. The spreadsheet listed 718 complaints from customers across the country who had experienced a Fuel Pump failure. As a result, the 2007 BMW 335I was the only Vehicle NHTSA tested, and the investigation was closed approximately three months later, on August 15, 2008.

54. The NHTSA investigation stated:

In response to ODI's Information Request for PE08-032 BMW stated that "during failure of the high pressure pump the customer should initially

experience longer engine start times or rough engine running. After a distance of approximately 1 to 2 miles the pump-and engine-emergency operation program is activated, and the malfunction indicator lamp is illuminated.”

Despite reduced engine power BMW believes that safe vehicle operation is possible and that vehicle driveability, steering, and braking systems are not affected and function in a normal manner. BMW indicated that only in very rare cases could the engine stall.

\* \* \*

ODI’s analysis of consumer complaints determined that about half describe the consequence of the failure as operation in limp mode, 27 percent indicate the problem resulted in a hard start or no start condition and 19 percent state that the problem was detected by illumination of the malfunction indicator lamp or a minor driveability symptom. Only four percent of the complaints to ODI and BMW indicate that an engine stall occurred. BMW has indicated that a service action was initiated in April 2008 to address the problem and it is continuing to monitor the field situation and analyze field data.

\* \* \*

Further investigation of this matter would not be an efficient allocation of agency resources. Accordingly, this investigation is closed. ***The closing of this investigation does not constitute a finding by NHTSA that a safety-related defect does not exist.***

55. Since the NHTSA investigation was closed, thousands of other BMW owners and lessees have experienced Fuel Pump failures, and the defect has manifested in all Vehicles that contain the N54 engine, Fuel Injection System and Fuel Pump – not just the 2007 BMW 335I – as recently admitted by BMW in its May 2010 Bulletin and subsequently in its Recall.

56. The following are examples of complaints filed by consumers with NHTSA after the investigation was closed. The complaints reflect the strikingly consistent and regular incidence of the Fuel Pump failure, BMW’s refusal to honor its Warranty or correct the defect, and the unreasonable safety risk associated with it:



Make: BMW

Model: 335I

[Model] Year: 2008

Complaint Number: 10356714

Date of Failure: August 30, 2010

Summary: I have now experienced four failures of the high pressure fuel pump on my 2008 BMW 335I coupe in the past year. Three of these failures resulted in situations where power was lost while the vehicle was in heavy traffic that could have resulted in collisions from the rear. In all cases the car was behaving normally at speeds up to 70mph and then the engine would stop or go into limp mode allowing travel at less than 20mph. The fourth case resulted in the car not starting. In all four instances the BMW dealer stated the problem was the high pressure fuel pump. The pump has now been replaced twice and the engine software has been updated three times. The most recent instance occurred in late August and required that the vehicle be towed. That is the occurrence reported in the balance of the form. Previous failures were in June of 2010, August of 2009 and July of 2009. This is clearly a problem that could result in a very serious accident if it were to occur in close quarters at high speed.

Make: BMW

Model: 335I

[Model] Year: 2008

Complaint Number: 10353710

Date of Failure: August 24, 2010

Summary: I bought a new 2008 BMW 335I convertible. At approximately 13,000 miles, 12 months after purchase, the high pressure fuel pump failed "engine malfunction-reduced power". The car began shaking when trying to start it. It took progressively longer to start the car. A brand new fuel pump was installed by BMW of Dallas. 12 months later, the same problem recurred with similar symptoms. Roseville BMW kept the car for 1 week and updated the software claiming BMW authorized the safe release of the vehicle per their standards. The service personal instructed me that there is really no fix for the car and numerous customers have come in for this issue, some with extremely unsafe presentations, such as the car suddenly losing power on the freeway while going 80 miles/hour in front of a big rig. He said that my problems are related to this safety compromise. I took the car home after Roseville BMW deemed it safe. The next morning, I turned the car on and the car started shaking violently and the rpms would go to 3,000 back to 1,000 and back to 3,000 on its own. Then it began shaking excessively and the "engine malfunction reduced power" light came on. I called into Roseville BMW, and the same service advisor called it unsafe to drive and had it towed in (within 16 hours of releasing it to me in "safe condition").

They are attempting to replace the fuel pump again but admit that this is not a fix because there is really no fix for this problem.

Make: BMW

Model: 335I

[Model] Year: 2008

Complaint Number: 10347964

Date of Failure: November 7, 2009

Summary: Car showed signs of long crank, when starting and hesitation when driving the vehicle at all speeds. Eventually the check engine light would come on and off. Car eventually stalled out and engine light came on when driving on the freeway in heavy traffic, all power was lost in the vehicle including steering. Dealership replaced the high pressure pump and two months later when it failed again reprogrammed the car. Two additional visits to the shop for the same circumstances – car stalled on the freeway losing all power and dealership replaced injectors, ignition coils, sparkplugs and the most recent claim that the car was low on fuel with ¼ tank! When car dies all of a sudden on the freeway at a speed of 60+ miles per hour is extremely dangerous. Seeing all the others with the same problems made me realize that BMW is not going to address the problem until something tragic happens.

Make: BMW

Model: 335I

[Model] Year: 2008

Complaint Number: 10346455

Date of Failure: July 24, 2010

Summary: On July 24, 2010, my 2008 BMW 335I sedan experienced an HFPP failure in heavy traffic at highway speed. My 335I (delivered July 2008) has had long start cranks for at least one year. My Washington, DC BMW dealership has said it cannot replace the HPFP until it fails or throws an electronic code. On July 24, I was driving approx 500 miles to a vacation. 350 miles into the trip, on I-87 at approx 65 mph in very heavy traffic, a car cut into my (middle) lane. I moved to the left lane and quickly applied medium throttle to keep up with traffic. My engine stumbled severely as I changed lanes/accelerated and the half-power engine light came on. The car began running extremely roughly, would not accelerate and lost speed rapidly, in the left lane of a very crowded highway. The car behind me nearly rear-ended me. I shut off any accessories (air conditioning, stereo, etc.), pushed the gas pedal to the floor and was able to maintain approx 50-55mph on a long downhill as I merged over to the right lane and was able to get out of traffic. As I pulled off, the car neared a stall, with the engine idle jumping wildly. I turned the car off. A minute or two after turning it back on, the half-power engine icon came on again, along with a service engine soon light, and the engine again had almost no power to accelerate and ran roughly. The

HPFP and lower pressure fuel sensor were replaced by Keeler BMW, Latham, NY, on July 29, 2010. My car had received the software update during a past service. I've known about the HPFP problem for several years. Because of the long cranks, I have been waiting for mine to fail and hoped it would not be in a dangerous situation. I noted a recent article in which a BMW spokesperson said the failures are not occurring at highway speed. Given my experience, BMW needs to be honest about this problem. I was driving at highway speed, in very heavy traffic, and feel fortunate to have come out without getting in an accident or worse.

Make: BMW

Model: 335I

[Model] Year: 2008

Complaint Number: 10346449

Date of Failure: July 26, 2010

Summary: Engine starts are preceded by long cranks, fluctuating rpms and shaking felt at the driver's seat. Car going 70mph, host power upon acceleration on a busy highway driving back from work. "Engine malfunction-reduced power" warning came on the dashboard, as well as the half engine light. Cars behind me frantically switched lanes to avoid collision. The warning message went away after I restarted car later, but kept showing up every time I drove. This happens without fail every time I drive. I've already made an appointment with the dealership to fix the problem. This is, apparently, a well known failure. BMWNA has issued an extended warranty on the fuel pump system, but has not issued an official recall. This problem can potentially lead to serious injuries/collisions. BMWNA must issue an official recall soon.

Make: BMW

Model: 335I

[Model] Year: 2008

Complaint Number: 10345013

Date of Failure: July 22, 2010

Summary: Another high pressure fuel pump failure in my 2008 BMW 335I. This time it happened without any warning, just after picking up my children at pre-school. I pulled out onto a busy street which is difficult to get a whole in traffic. Stepped on the gas to pull out and speed up quickly to the flow of traffic (45mph), the car starts to accelerate for about 2 seconds, then acts like I took my foot off the accelerator, goes into limp mode, rpm drip to 4-500rpm and the car shakes and runs rough and will barely accelerate no matter how hard I push the gas pedal. The flow of traffic has to brake extremely hard to avoid rear ending me since there is no real shoulder or any time to even pull over, thank god I was not hit and everyone else in traffic managed to slow down quickly without incident – it would have been easy for this to have ended in a 40mph speed differential rear end collision with 2 small children in my car. I would like

to feel confident that I can return my car for repair, but since this is the apparently repaired part already installed and that even the new repair part that will be put in my car has already failed many times according to the dealer, I feel that BMW is just putting me back in potentially the same dangerous position to happen again. My first fuel pump failed at 2000 miles, this one failed at 10000 miles, at this rate I will need 20 fuel pump replacements before the 100000 mile warranty runs out and potentially be in up to 20 accidents before someone is seriously injured or killed!

Make: BMW

Model: 335XI

[Model] Year: 2008

Complaint Number: 10357166

Date of Failure: September 7, 2010

Summary: 20078 BMW 335XI: Under moderate acceleration, car loses power and eventually stalls. Can sometimes be restarted, though it has completely failed as well. Can cause loss of control while driving vehicle. High-pressure fuel pump has been replaced twice and failure still occurs.

Make: BMW

Model: 335XI

[Model] Year: 2008

Complaint Number: 10356254

Date of Failure: September 17, 2010

Summary: The car started but it started extremely "rough" while the engine rpms racing then dropping down to 500 rpms, feeling like it was going to stall. Eventually it evened out. Unfortunately, starting issues are frequent occurrence since I purchased this car and it has been to the dealer several times for similar starting issues. They replaced: the high pressure fuel pump which BMW knows it has issues with, made "software" updates, and replaced the DMA. This time, however, when I began to drive it and turn on to a busy street, I essentially lost most of the power in the car. It was extremely disconcerting to step on the gas, expect the car to respond and it didn't. This could have been a disaster if it had happened while attempting to get on a busy freeway. Thankfully, it wasn't but I'm worried it will happen again if I attempt to drive it to the dealer. After researching to see if others have had similar issues, indeed they have. All issues seem to be related to BMW's high pressure fuel pump issue, which they clearly have not solved given many have been replaced several times with the same unfortunate outcome of going bad again. I have had mine replaced by the dealer but am now having issues again. Detailed accounts are all over the internet (some serious safety issues as it has happened on the freeway) and I am surprised NHTSA hasn't done any serious investigation, nor forced BMW to recall either the vehicle or replace all parts that are affected and needed to correctly fix the issue (fuel pump, low pressure sensor, fuel injectors, etc.). I am

considering contacting reporters because this is a Toyota type safety issue waiting to happen. While it may only happen in a certain % of vehicles, does someone have to die to have this issue taken seriously and properly corrected? People have been “lucky” thus far, but this really is a safety issue and someone must force BMW to address it.

Make: BMW

Model: 335XI

[Model] Year: 2008

Complaint Number: 10301653

Date of Failure: January 15, 2010

Summary: My BMW 335XI has repeatedly had fuel pump issues. The engine will malfunction when I am in the middle of the road (often times in the middle of the highway). This is not only a potential safety issue for myself, but for others on the road as well. This fuel pump failure issue prevents my car from moving, which can potentially lead to someone's death, especially on the highway. Please force BMW to recall this fuel pump asap.

Make: BMW

Model: 5 Series

[Model] Year: 2008

Complaint Number: 10345570

Date of Failure: May 20, 2010

Summary: On 5/20/10, my 2008 535XI suddenly lost power while driving on a single lane, resulting in a near rear-end collision. This happened once previously. Both times the car was towed and the dealer said they replaced the high pressure fuel pump. I complained about the latest incidence to BMW customer relations and services department.

Make: BMW

Model: 5 Series

[Model] Year: 2008

Complaint Number: 10345080

Date of Failure: June 26, 2010

Summary: June 2010 – I was driving my 2008 BMW 535 station wagon on the highway (Long Island Expressway I-495, New York) at 65 miles per hour when the car lurched, made a loud noise and lost power. BMW replaced the high pressure fuel pump. August 2009 – the car started but lights on dash board went on saying “vehicle had reduced power”. It was towed to BMW dealership, where they replaced the high pressure fuel pump. August 2008 – the BMW lost power on the highway and was towed to dealer. They made a repair to the fuel injection system.

Make: BMW

Model: 5 Series

[Model] Year: 2008

Complaint Number: 10255778

Date of Failure: January 17, 2009

Summary: I want to voice my utmost dissatisfaction with my 535I (customer #113894) thus far based on following details. Service dated: 5/22/08, mileage: 7592, vehicle experienced difficulty starting ignition. Your service department replaced "high pressure fuel pump." Service date: 1/17/09, mileage: 16495, vehicle displayed message, "engine malfunction, reduced speed" then engine stalled during driving in 5 freeway. Your service department replaced "high pressure fuel pump." Latest episode happened driving in 5 freeway with my two kids in back seat. Car stalled in the middle of freeway and I've had close call with semi truck coming right behind me. I thought he was going to slam right into me! Needless to [say] this experience [has] given me a scare and fear for my kids' safety, which prompted me to file a complaint with NHTSA. This 535I is my first BMW and it will probably be my last one. I've had Acuras before this vehicle and had not had this type of life threatening vehicle malfunction.

Make: BMW

Model: 335I

[Model] Year: 2009

Complaint Number: 10355896

Date of Failure: September 10, 2010

Summary: I own a 2009 BMW 335I which has the type N54 engine. I have owned this car since May 2009. I have had 2 high pressure fuel pumps replaced. The last malfunction just occurred as I was at highway speed 65mph + and the engine went into the limp home mode. Because of this mode the car had a drastic reduction of power, without any warning. I was lucky I was able to get to the right lane and limp to dealership with a top speed of 50mph. This was a dangerous situation to me and other drivers on the highway. The N54 engine is a major issue for BMW, their own service advisors state that almost 60% of these engines have had fuel pump malfunctions, resulting in replacement.

Make: BMW

Model: 335I

[Model] Year: 2009

Complaint Number: 10351761

Date of Failure: August 19, 2010

Summary: The car's high pressure fuel pump failed on freeway on-ramp acceleration leading to a near rear-end collision by a following car. This failure was preceded by a long-crank starting and engine racing on starting. The HPFP was replaced at 6,000 miles (10/09). At 12,000 miles the software was reprogrammed. (6/10) The dealer says it is replacing the HPFP again. This appears to be an ongoing problem with the BMW 335I

engine starting with the 2007 models as reported on this website. According to a survey of 300+ owners nearly 50% have experienced this problem.

Make: BMW

Model: 335I

[Model] Year: 2009

Complaint Number: 10345597

Date of Failure: December 11, 2009

Summary: The fuel pump on my 2009 BMW 335I has failed and I believe it's starting to fail again but every time I take it in they say its fine and they can't do anything until it actually fails. Problem with that is if it fails on the highway doing 70mph then I'm going to be in a world of hurt. The pump has already failed once.

Make: BMW

Model: 335XI

[Model] Year: 2009

Complaint Number: 10327549

Date of Failure: April 26, 2010

Summary: Fourth replacement of HPFP on 2009 BMW 335XI less than 12k miles. Less than 12 months old.

Make: BMW

Model: 335I

[Model] Year: 2010

Complaint Number: 10348364

Date of Failure: August 7, 2010

Summary: I own a Jan. 2010 BMW 335I with 5,800 miles on it. While driving on a freeway, the warning system came on and read that the engine was at reduced power but I could continue driving at a reduced speed. As I was reading the notice, the engine died and I had to glide over 5 lanes with no power to reach the side of the freeway. When the car was towed to a dealership and the problem explained, someone in the service department suspected it was the high injection fuel pump because they've had to replace others. That was the problem. So why isn't there a recall out on this? I was travelling 65mph and could have been killed trying to get to the side of the freeway.

Make: BMW

Model: 335XI

[Model] Year: 2010

Complaint Number: 10345851

Date of Failure: May 27, 2010

Summary: My 2010 BMW 335XI (3,500 miles) suddenly stalled on WA Highway 520, on the Lake Washington Bridge in the middle of rush hour traffic due to HPFP failure. There was a malfunction warning on the nav



display, stating that only limited engine power was available, when two seconds later the engine stalled, losing power steering and brakes as well. I was going approx. 25 mph in heavy traffic entering the bridge that has no shoulder. I was blocking one of two eastbound lanes and posed a significant safety risk. I was able to restart the engine and go for approx. 50 yards before the engine stalled again. Doing so 4-5 times I reached the midspan turnout and stopped in an extremely dangerous spot. I called roadside assistance when a DOT truck approached and pushed me off the remainder of the bridge. I was in an extremely unsafe position for approx. 30 minutes! The car was towed and the problem was a high pressure fuel pump failure, the pump was replaced. When I called BMW to complain, the rep said she had never heard of this problem before. I just read an article and this problem seems to be widespread. A brand new car stalling on the freeway without warning is extremely unnerving and dangerous.

Make: BMW

Model: 535I

[Model] Year: 2010

Complaint Number: 10354995

Date of Failure: September 3, 2010

Summary: Recurrent engine failure secondary to high pressure fuel pump in brand new BMW 535I. First failure at 3000 miles; second failure after repair around 6000 miles. Both failures without warning and severe loss of power in high speed traffic.

Make: BMW

Model: 535I

[Model] Year: 2010

Complaint Number: 10353954

Date of Failure: August 30, 2010

Summary: The vehicle suddenly shows an engine malfunction alert and then the power immediately slows down and then I had a minute to try and get off to the right on the freeway before the engine turned itself off. The vehicle was towed to the dealer and was told that it was the high powered fuel pump. There are numerous other people on the internet with the same experience. I am seven months pregnant and am grateful that I was able to get to the right side of the highway.

Make: BMW

Model: 535I

[Model] Year: 2010

Complaint Number: 10345207

Date of Failure: July 1, 2010

Summary: At around 3000 miles (2010 535XI), while attempting to accelerate onto highway engine power died – engine light came on, and car eventually stalled. Luckily was in right lane at time so managed to pull over. Tried to start car several times with no luck. Waited several



minutes and car did start but continued having acceleration problems. Took it to dealer and had fuel pump replaced. Told it was a common problem.

57. Similar consumer complaints are published frequently on the internet. For example, as of December 22, 2010, more than 767 owners or lessees of BMW Vehicles had signed a petition entitled, "BMW No More Fuel Pump Failures." The petition states, in pertinent part:

To: BMW

Dear BMW management,

As educated, experienced, and dedicated automotive enthusiasts who love to drive, we buy BMW's and we do so with high expectations. *We pay a premium for the engineering and attention to detail that creates the "Ultimate Driving Machine", and recently we have been let down. The continuing problems with the high pressure fuel system on the N54 engines has reached epidemic levels, with owners of cars less than two years old having had as many as three replacement pumps installed, and countless hours of their time wasted. The problem has existed since the introduction of the engine over three years ago, and we feel that we've been extremely patient in waiting for a real solution, which hasn't come. The pump failures continue even on the most recent model year, and the replacement pumps aren't lasting any longer than the originals in many cases.*

Because of the likelihood of failure and the lack of a proactive approach on BMW's part, we have new cars we're afraid to drive on long distance trips for fear of being stranded on the side of the road in the middle of nowhere. Even when the obvious symptoms start to appear our dealerships are reluctant to repair the vehicles even though everyone involved knows it is about to experiencing a failure, which leaves us no choice but to drive the vehicle until it dies, then call for a truck to pick it up. *The extended warranty was a nice gesture, but at the end of the day we're all driving a car with a major and well known engineering issue that we will eventually be responsible for repairing and a vehicle that can't be depended on.*

The effects of this issue on resale are already apparent, and there's no doubt it's affecting new vehicle sales as well. The horrible reliability we're experiencing with this engine is unacceptable form "The Ultimate Driving Machine", as is your handling of the issue.

\* \* \*

Sincerely,

The Undersigned

58. Both the petition and the NHTSA complaints are illustrative of the type of complaints common between Plaintiff and other Class members. Regardless of the Vehicle's make or model, the complaints are strikingly similar, each demonstrating that the Fuel Pumps fail regularly, under normal driving conditions, and that Class members have repeatedly replaced the Fuel Pump on their Vehicles. The complaints also demonstrate that although BMW was made aware of the defect, it refuses to fix the defect pursuant to the Warranty.

59. As demonstrated above, BMW has long known that the N54 engine, Fuel Injection System and Fuel Pump combination is defective, manifesting in repeated Fuel Pump failures. Additionally, BMW has exclusive access to information about the defective Fuel Pumps through its dealerships, pre-release testing data, Warranty data, customer complaint data and replacement parts data, among other sources of aggregate information about the problem.

60. By contrast, the defect manifested by the Fuel Pump failures was not known or reasonably discoverable by Plaintiff and the Class prior to purchase or lease of the Vehicles. Plaintiff and the Class had to experience the defect first-hand, thereby exposing them to an unreasonable safety risk.

61. Notwithstanding BMW's knowledge of numerous Fuel Pump failures and the defective material and design, BMW has engaged in a calculated pattern and practice to hide the true nature of the Fuel Pump failures.

62. BMW knew that potential car buyers and lessees would deem the defect to be material such that reasonable consumers who knew of the defect either would have paid less for the Vehicles or would not have purchased or leased them at all.

63. Had Plaintiff and the Class been advised of the defects, or the fact that BMW would refuse to honor its Warranty and correct the defect, Plaintiff and the Class would not have purchased or leased the Vehicles or would have paid substantially less for them.

64. As a result of BMW's actions and inactions, Plaintiff and the Class have been injured and damaged. Plaintiff and the Class purchased or leased Vehicles they otherwise would not have purchased or leased, paid more for those Vehicles than they otherwise would have paid, and continue to be subjected to an unreasonable risk to their safety, all to the financial benefit of BMW.

#### **SPECIFIC FACTUAL ALLEGATIONS AS TO PLAINTIFF**

##### **Plaintiff's Vehicle**

65. On or about March 31, 2007, Plaintiff purchased a new, 2008 BMW 535i Vehicle from an authorized BMW dealership.

##### **Plaintiff's Warranty**

66. Like all members of the Class, BMW provided Plaintiff with various materials at the time he purchased his Vehicle. Among those materials were two manuals: (1) a manual entitled, "Service and Warranty Information" ("Plaintiff's Warranty Manual"); and (2) a manual entitled, "Owner's Manual for Vehicle" ("Plaintiff's Owner's Manual").

67. Like all members of the Class, Plaintiff's Warranty Manual made the following representations about the standard BMW Warranty:

**Warrantor**

BMW of North America, LLC (BMW NA) warrants...against defects in materials or workmanship to the first retail purchaser, and each subsequent purchaser.

**Warranty Period**

The warranty period is 48 months or 50,000 miles, whichever occurs first.

**Warranty Coverage**

To obtain service under this warranty, the vehicle must be brought, upon discovery of a defect in material or workmanship, to the workshop of any authorized BMW center in the United States or Puerto Rico, during normal business hours. *The BMW center will, without charge for parts or labor, either repair or replace the defective part(s) using new or authorized remanufactured parts.*

68. Plaintiff's Owner's Manual reiterated BMW's Warranty against defects and also warns of the detrimental effects and dangers to personal safety associated with the use of parts and accessories that are not "approved by BMW," stating:

For your own safety, use genuine parts and accessories approved by BMW. When you purchase accessories tested and approved by BMW and Genuine BMW Parts, you simultaneously acquire the assurance that they have been thoroughly tested by BMW to ensure optimum performance when installed on your vehicle

*BMW warrants these parts to be free from defects in material and workmanship.*

**Plaintiff Was Repeatedly Exposed To BMW Representations**

69. In addition to the representations in Plaintiff's Warranty Manual and Plaintiff's Owner's Manual, Plaintiff was repeatedly exposed to advertisements and other representations that BMW publicly disseminates in magazines, on television, throughout

the internet and in other media, as well as in brochures, manuals, and other printed advertisements BMW provides to potential customers at all BMW authorized dealerships.

70. Like all members of the Class, Plaintiff was exposed to the following BMW representations at the time he leased his Vehicle, which were widely disseminated in a variety of BMW commercials and print advertisements:

- a. BMW Vehicles are high-quality, high-performance Vehicles;
- b. BMW Vehicles are durable, without defect, and suitable for the purposes for which they are intended;
- c. BMW Vehicles are tested by BMW to ensure that they maintain the highest standards of safety, innovation, performance, durability and strength in the automotive industry; and
- d. BMW Vehicles eliminate turbo lag.

**The Fuel Pump on Plaintiff's Vehicle Failed Twice**

71. Plaintiff's Vehicle had been driven approximately 35,000 miles when Plaintiff experienced the Fuel Pump failure in November of 2010.

72. Plaintiff took the Vehicle to an authorized BMW dealership to cure the defect.

73. When Plaintiff took his Vehicle for repair, the reduced power/engine malfunction warning appeared on Plaintiff's dashboard.

74. Plaintiff was told that the Fuel Pump had failed.

75. The defect was not corrected pursuant to his Warranty.

### **TOLLING OF THE STATUTE OF LIMITATIONS**

76. The defect as alleged herein is latent and self-concealing. Accordingly, exercising reasonable care, Plaintiff and the Class members cannot discover that such inherent defect exists.

77. By suppressing the dissemination of truthful information regarding the defect, BMW has actively foreclosed Plaintiff and the Class members from learning of the latent defect.

78. By reason of the foregoing, the claims of Plaintiff and other Class members are timely under any applicable statute of limitations (as tolled by the filing of this class action petition) pursuant to the discovery rule and the doctrine of fraudulent concealment.

79. BMW has been aware of the defective nature of the N54 Engine, Fuel Injection System and Fuel Pump combination for several years.

80. Despite this knowledge and awareness, BMW has continued to manufacture and sell the Vehicles on which the N54 Engine, Fuel Injection System and Fuel Pump are installed, has engaged in an ongoing scheme to hide the defective nature of the combination as set forth above, and has failed to take appropriate action towards inspecting, repairing, or correcting the defect.

81. BMW's failure to take necessary steps to remedy the defect, their failure to suspend sales of the Vehicles in the United States, and their refusal to inspect, repair, or replace the defective parts, in light of their knowledge that these parts would fail prematurely and damage Plaintiff and the members of the Class, was and is willful, wanton, malicious, outrageous, and was and continues to be undertaken in deliberate

disregard of, or with reckless indifference to, the rights, interests, and safety of Plaintiff and the Class members.

## **COUNT I**

### **BREACH OF EXPRESS WARRANTIES**

82. Plaintiff realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

83. Plaintiff, and all others similarly situated, relied in good faith upon BMW's written representations and warranties in making their determination to purchase or lease their BMW Vehicles.

84. With the purchase or lease of each Vehicle, BMW specifically and uniformly warranted in writing that any part of the Vehicle that proved to be defective would be replaced or repaired by BMW at no cost to Plaintiff or members of the Class.

85. BMW has breached its express warranties to Plaintiff and the Class members in that the N54 engine, Fuel Injection System and Fuel Pump do not perform as represented by BMW.

86. BMW has also breached its express warranties to Plaintiff and Class members in that BMW has failed, and continues to fail, to correct the defect.

87. As a direct and proximate result of BMW's breach of its express warranties, Plaintiff and the Class members have suffered or will suffer damages, which include, without limitation, the diminution in value of Plaintiff and the Class members' Vehicles, reimbursement of the costs and expenses already expended by Plaintiff and the Class members as a result of the Fuel Pump failures, and other damage caused by the defect in an amount to be determined at trial.

**COUNT II**

**BREACH OF WRITTEN WARRANTY PURSUANT TO  
THE MAGNUSON-MOSS WARRANTY ACT**

88. Plaintiff realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

89. Plaintiff and the other Class members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

90. BMW is a “supplier” and “warrantor” within the meaning of sections 2301(4)-(5).

91. The Vehicles are “consumer products” within the meaning of section 2301(1).

92. BMW’s express warranty is a “written warranty” within the meaning of section 2301(6).

93. BMW breached the express warranty by:

- a. Warranting to repair or replace any part defective in material or workmanship at no cost to the owner or lessee;
- b. Selling and leasing Vehicles that were defective in material and workmanship, requiring repair or replacement within the warranty period; and
- c. Refusing to honor the express warranty and correcting the defect, free of charge.

94. BMW’s breach of the express warranty has deprived Plaintiff and the other Class members of the benefit of their bargain.

95. The amount in controversy of the Plaintiff’s individual claims meets or exceeds the sum or value of \$25. In addition, the amount in controversy meets or



exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

96. BMW has been afforded a reasonable opportunity to cure its breach of written warranty, including when Plaintiff and other Class members brought their Vehicles in for repair each time a Fuel Pump failed.

97. As a direct and proximate result of BMW's breach of its express written warranties, Plaintiff and the Class members have suffered damages and other losses in an amount to be determined at trial. Accordingly, Plaintiff and the Class are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other relief as appropriate.

### **COUNT III**

#### **VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT**

98. Plaintiff realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

99. Plaintiff and the Class members are consumers who purchased or leased a BMW Vehicle from an authorized BMW dealer.

100. BMW used, by means of an affirmative act, an unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation, in connection with the advertisement or sale of its Vehicles with the capacity and/or intent to mislead or deceive Plaintiff and the Class in violation of N.J.S.A. 56:8-1 *et seq.* (the "New Jersey Consumer Fraud Act").

101. In addition, BMW knowingly concealed, suppressed, omitted, left out, or did not mention important or significant facts purposely or with the intent that Plaintiff

and the Class would rely on that concealment, suppression and/or omission in connection with the sale or advertisement of its Vehicles in violation of the New Jersey Consumer Fraud Act. Plaintiff and the Class relied upon the facts as communicated to them without having the opportunity to also consider the facts which were concealed, suppressed, or omitted when they purchased or leased their BMW Vehicles.

102. As a direct and proximate result of BMW's unlawful conduct, Plaintiff and the Class members have suffered or will suffer damages, which include, without limitation, the diminution in value of Plaintiff's and the Class members' Vehicles and reimbursement of the costs and expenses already expended by Plaintiff and the Class members as a result of the defect in an amount to be determined at trial.

103. As a direct and proximate result of BMW's conduct, Plaintiff and the Class are entitled to treble damages and attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray the Court to enter judgment against BMW and in favor of Plaintiff, on behalf of himself and the Class members, and to award the following relief:

- A. Certifying this action as a nationwide class action, certifying Plaintiff as a representative of the Class and designating his counsel as counsel for the Class;
- B. Tolling the statute of limitations pursuant to the discovery rule and the doctrine of fraudulent concealment;
- C. Affording Plaintiff and the Class final injunctive relief compelling BMW to stop selling and leasing the Vehicles and to recall, inspect and, as necessary, repair

and/or replace Engines and/or component parts in their Vehicles at BMW's expense, and adequately inform members of the Class of the defects;

D. Awarding the Plaintiff and each Class member compensatory damages for the acts complained of herein;

E. Awarding the Plaintiff and each Class member treble damages for the acts complained of herein;

F. Awarding the Plaintiff and each Class member costs and attorneys' fees, as allowed by law, and/or awarding counsel for the Class attorneys' fees;

G. Awarding the Plaintiff and each class member statutory pre-judgment interest;

H. For legal and equitable relief as this Court may deem just and proper; and

I. Granting such other or further relief as may be appropriate under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Dated: January 4, 2011

**Felgoise Law Firm**

By: s/ Brian M. Felgoise  
Brian M. Felgoise  
261 Old York Road – Suite 518  
Jenkintown, PA 19046  
215-886-1900  
215-886-1909 (Facsimile)

*Counsel for Plaintiff*